



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

201324026

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

MAR 18 2013

Uniform Issue List: 408.03-00

TEP: RA: T1

Legend:

Taxpayer A =

IRA B =

Bank C =

Bank D =

Bank E =

Account F =

Account G =

Amount 1 =

Amount 2 =

Amount 3 =

Dear

This letter is in response to your request dated November 19, 2012, as supplemented by correspondence dated February 7, 2013, from your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A represents that she received a distribution from IRA B totaling Amount 1. Taxpayer A asserts that her failure to accomplish a rollover of Amount 1 within the 60-day period prescribed by section 408(d)(3) was due to a mistake by Bank E in failing to deposit Amount 1 into a rollover IRA CD. Taxpayer A also represents that Amount 1 has not been used for any other purpose and remains in a non-IRA account.

Taxpayer A represents that she owned IRA B, which was maintained by Bank C. When Bank C was acquired by Bank D, Taxpayer A decided to move all of her accounts into Bank E. On May , 20 , she withdrew, via a cashier's check, Amount 1. She had previously closed, at Bank D, a savings CD for Amount 2 and a savings account for Amount 3. Her intent was to move Amount 1 into an IRA CD with Bank E and Amount 2 and Amount 3 into a savings account in Bank E.

On June , 20 Taxpayer A met with a representative of Bank E and requested an IRA CD for Amount 1 and a savings account for Amount 2 and Amount 3. Instead, the representative of Bank E deposited all the funds into a money-market account. The mistake was discovered in August 20 when Taxpayer A received a notice from the Internal Revenue Service informing her of an adjustment to her 20 Form 1040 for withdrawing IRA funds.

Taxpayer A contacted Bank E about the error but was told nothing could be done to fix the error. On August , 20 , Taxpayer A then withdrew the total amount from the money-market account in Bank E receiving a cashier's check which was never cashed. After unsuccessful attempts by Taxpayer A's attorney to have Bank E correct the error, the attorney instructed her to return the cashier's check to Bank E to be deposited in segregated accounts. On October , 20 , Bank E did redeposit the amounts into segregated accounts, Account F for Amount 1 and Account G for Amount 2 and Amount 3. Earnings on the total amount were allocated between Account E and Account F.

Based on the facts and representations, a ruling has been requested that the Internal Revenue Service waive the 60 day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 1.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if:

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup> day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60<sup>th</sup> day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover was due to a mistake by Bank E which resulted in Amount 1 being deposited into a non-IRA account.

Therefore, pursuant to section 408(d)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA B. Taxpayer A is granted a period of 60 days from the issuance of this letter ruling to contribute no more than Amount 1 into a rollover IRA. Provided all other requirements of section 408(d)(3), except the 60-day rollover requirement, are met with respect to such contribution, the contribution will be considered a rollover contribution within the meaning of section 408(d)(3).

This ruling does not authorize the rollover of any amounts that are required to be distributed by section 401(a)(9) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office. If you wish to inquire about this ruling, please contact \*\*\*\*\* (ID \*\*\*\*\*) at (\*\*\*) \*\*\*-\*\*\*\*. Please address all correspondence to SE:T:EP:RA:T1.

Sincerely,



Carlton Watkins, Manager  
Employee Plans Technical Group 1

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose

CC: